

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAURICE R. GOINS, EB-7972,)	
Petitioner)	
)	
v.)	2:12-cv-373
)	
MICHAEL W. HARLOW,)	
Respondent.)	

REPORT and RECOMMENDATION

I. Recommendation:

It is respectfully recommended that the petition of Maurice R. Goins for a writ of habeas corpus be dismissed and because reasonable jurists could not conclude that a basis for appeal exists, that a certificate of appealability be denied.

II. Report:

Maurice R. Goins, an inmate at the State Correctional Institution at Albion has presented a “Petition for a writ of Habeas Corpus ad Testificandum” which he has been granted leave to prosecute in forma pauperis.

In his petition, Goins does not seek to challenge any conviction but rather his housing in the RHU at Albion and seeking release from that type of confinement.¹ In Leamer v. Fauver, 288 F.3d 532 (3d Cir.2002), the Court repeated that habeas corpus relief is limited to review of the legality of detention the relief being release from custody. Here Goins does not challenge the legality of his conviction or detention but rather the conditions under which the imposed sentence is being served. The latter is clearly the scope of a §1983 action. Leamer supra. However, having previously experienced the dismissal of prior §1983 actions on more than three

¹ Previously, Goins unsuccessfully filed habeas corpus petitions in this Court which were assigned to our late colleague the Hon. Amy R. Hay. In those petitions he sought to challenge his conviction in the Court of Common Pleas of Allegheny County, Pennsylvania. While under L.R. 3.1.A.1 this case would normally be assigned to the same judicial officer, as a result of the untimely death of Judge Hay, the case was assigned to the undersigned.

occasions he can no longer proceed in a civil rights action as a pauper. 28 U.S.C. §1915(g).²
Thus, the attempted end-run against this statute.³

Thus, because this petition cannot be considered as a civil right petition and has no merit as a habeas corpus petition, it is recommended that it be dismissed. Additionally, because reasonable jurists could not conclude that a basis for appeal exists, it is also recommended that a certificate of appealability be denied.

Litigants who seek to challenge this Report and Recommendation must seek review by the district judge by filing objections within fourteen (14) days of this date. Failure to do so will waive the right to appeal.

Filed: March 29, 2012

Respectfully submitted,
s/ Robert C. Mitchell
United States Magistrate Judge

² The petitioner had previous §1983 actions dismissed at 2:10-1102, 2:10-1112 and 2:09-1223 (and the cases cited therein).

³ We observe that the petitioner employed the same tactic in Civil Action 1:12-cv-55 which he originally filed in the state courts only to have the defendant remove the action to federal court at his own expense.